(1)

88-260

No. _____

IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA

October Term, 1988

IN RE EUGENE H. DAVIS; PETITIONER
IN PROPRIA PERSONA

---

on a Writ of Prohibition to the United States District Court of the District of Arizona, Tucson, Judge Alfredo C. Marquez presiding; Ninth Circuit Judges, Kilkenny, Sneed and O'Scannlain; Respondents

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PETITION FOR A WRIT OF PROHIBITION AND WRIT OF ERROR

Eugene H. Davis
7447 N. Camino De Oeste
Tucson, County of Pima
1st Judicial District (1909)
Republic of Arizona

RECUSAL OF JUSTICES

1. Justice William J. Brennan Jr. must recuse himself for the following reason: Justice Brennan, on August 8th, 1986, delivered a speech before the American Bar Association said the following and I quote, "The Fourteenth Amendment .... is the prime tool by which we (judges) as citizens can shape a society which truly champions the dignity and worth of the individual as its supreme value." "The Fourteenth Amendment", Brennan observed, "has become, practically speaking, perhaps our most important constitutional provision --- not even second in significance to the original basic document itself.....It is the amendment that served as the legal instrument of the egalitarian revolution that transformed contemporary American society."

Justice Brennan's belief that

essentially the United States Federal Constitution is a 'dead letter' a document that has probably outlived its usefulness except as a fond memory and so be-reft of intrinsic meaning as to be nothing more than a empty vessel into which judges must pour new wine.

This would not be in the best interest of the Defendant - Appellant to have his writ reviewed by said judge when this judge's views are in conflict with the U.S. Constitution as seen through the eyes of its founders and the Defendant - Appellant.

2. Justice Thurgood Marshall must rucuse himself for the following reason: Justice Marshall has, repeatedly, in his lectures about this great country, said that the U.S. Constitution was very weak and would not have survived without the Fourteenth Amendment overriding most of the original document.

This is his way of saying, that without the federal citizenship forced upon the preamble or judicial citizens without their knowledge pursuant to the Fourteenth Amendment breach, this Great Republic would just fall apart. I hope and I know that the body politic of this country is not in agreement with such ideology. This is foreign to our heritage and to the laws on the books at this point and time.

It would not be in the best interest of the Defendant - Appellant to have his writ reviewed by said judge when this judge's views are in conflict with the beliefs of the body politic and the Defendant - Appellant of this Republic.

3. Justice Anthony M. Kennedy must recuse himself for the following reason: Justice Kennedy was a member of the Ninth Circuit Court at the time the Defendant - Appellant's appeal was being considered

and therefore could and did have a part in the affirming and rejection of said appeal in this circuit court.

It would not be in the best interest of the Defendant - Appellant to have his writ reviewed by said judge for pre-knowledge opinions with prejudice against said Defendant - Appellant.

QUESTIONS PRESENTED FOR REVIEW

The Appellant presents herein, questions concerning decisions contrary and in error to existing case law within the Ninth Circuit, Second Circuit, District of Columbia Circuit and this Court the Supreme Court of the united States of America. The question of jurisdiction (obligation) and Due Process has always been challenged from the very start of this action against the Defendant - Appellant in U.S. District Court, for the District of Arizona.

QUESTION NO. 1

WHETHER NINTH CIRCUIT MUST REVIEW ALL QUESTIONS PRESENTED

The Ninth Circuit's panel of judges answered none of the questions presented for review as raised by Appellant's BRIEF and SUPPLEMENTAL REPLY BRIEF, and in denying a rehearing they ignored additional questions of great importance

to any decisions made in any Circuit Court. (1) Isn't it the rule of this Court that all Circuit Courts must review and relive the entire proceedings before the trial Court in any criminal court cases? (2) Is this not a violation of Due Process if not followed?

QUESTION NO. 2

WHETHER THE TRIAL COURT AND CIRCUIT COURT DECISIONS ARE IN CONFLICT WITH THEIR EARLY DECISIONS

Can the Internal Revenue Service, thru the united States attorneys CLOSE ASSOCIATION with the Grand Jury and the trial Court proceed with any action when a question of NO JURISDICTION to the Internal Revenue Service was timely presented to the trial Court? This was backed using case law as precedent, whereas in all cases the courts did ruled against the government at all court levels.

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CONSTITUTION

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OPINIONS AND ORDERS IN THE COURTS BELOW

The judgements, memorandums and orders of the District Court and the Ninth Circuit Court on the issues raised in this Petition are attached and are bonded by this statement to said Petition as Appendices A thru D. They are as follows:

Appendix A: Minute Entry and Order dated Feburary 23, 1987.

Appendix B: Memorandum and Order of Ninth Circuit Affirming the Trial Court dated 2/10/88

Appendix C: Order Rejection of rehearing en banc dated April 18, 1988

Appendix D: Order rejection of opening rehearing en banc dated June 19, 1988

JURISDICTION

Pursuant to the Defendant - Appellant's organic natural jurisdiction at the common law, and this Court's dual jurisdiction, the following writ has been written in dual jurisdictions. Point No.1 follows the rules set down at the organic natural common law and must be ruled on, pursuant to the de novo ruling of the Ninth circuit, in this Court's ORIGINAL jurisdiction. Point No.2 follows the rules set down at the Admiralty or Maritime jurisdiction under Ashwander and must be ruled on as such by this Court. I was forced, from my original status, Therefore, I must argue this writ in the same manner. (See Appendix I)

The minute entry of the United States District Court for the District of Arizona, Tucson, adjudged the defendant guilty as charged and convicted. Judgment was entered on 2/23/87. (printed in

Appendix A, pages 1-4). A timely filed Appeal made to the United States Court of Appeals for the Ninth Circuit was denied on 2/10/88, (printed in Appendix B, pages 1-6). A timely filed Petition for Rehearing en banc was rejected on April 18, 1988, (printed in Appendix C, pages 1-2) and a timely Petition for Reopening of the Rehearing with a motion to recall and/or stay the mandate en banc was DENIED, on June 19, 1988, (printed in the Appendix D, page 1).

The jurisdiction of this Court is invoked pursuant to 28 USC 1254 (1)

CONSTITUTIONAL PROVISIONS & FEDERAL STATUTES

Article III, U. S. Const. sections 1&2 (Appendix E, page 1)

Fifth Amendment, (Appendix J, page 1)

Declaration of Independence, 2nd. para. 1st & 2nd sentences. (Appendix F, page 1)

STATEMENT OF THE CASE

On or about 10/1/86, the united States attorney and the IRS did perjure themselves before the Grand jury to bring forth an illegal indictment against the Defendant - Appellant.

On or about 11/24/86, the united States district Court for the district of Arizona at Tucson did illegally assume jurisdiction by arraignment of the Defendant - Appellant.

On or about 1/6/87, the trial Court did, against the challenges of jurisdiction by the Defendant - Appellant (Appendix I, pages 1-3), ignore said challenges and forge ahead illegally with a jury trial.

On or about 1/9/87, the jury did return with a verdict of guilty on counts 1 thru 3 in violation of Title 26, united State Code, Section 7201, attempt to evade and defeat tax, as charged in the

Indictment.

On or about 1/13/87, the Defendant - Appellant did file a timely notice of appeal by right.

On or about 2/23/87, a minute entry and order was sign by judge Alfredo Marquez.

On or about 6/22/87, the Defendant - Appellant did file his appeal brief to the Ninth circuit Court

On or about 7/13/87, the assistant U.S. attorney, Janet K. Johnson, did file the governments brief.

On or about 7/27/87, the Defendant - Appellant did file his reply brief.

On or about 2/10/88, the Ninth circuit Court did affirm the trial Court's decision. (Appendix B, pages 1-6)

On or about 2/22/88, the Defendant - Appellant did file a motion for rehearing en banc to the Ninth circuit Court.

On or about 4/18/88 the Ninth circuit

Court did reject the rehearing and the en banc. (Appendix C, pages 1-2)

On or about 5/21/88, the Defendant - Appellant did file a motion to reopen the rehearing en banc because of new evidence. (Appendix K, pages 1-8)

On or about 6/19/88 the Ninth circuit Court rejected reopening of the rehearing. (Appendix D, page 1)

REASON FOR GRANTING WRIT OF PROHIBITION AND WRIT OF ERROR

POINT NO. 1

COURTS ARE BOUND BY STATUTE AND CASE LAW TO RELIVE THE WHOLE CASE

The Appeals Court Judges Kilkenny, Sneed and O'Scannlain state they reviewed said Trial Court case in de novo. (see Appendix B, pages 2&3) and (See Appendix H, page 1) If this was true then they could and did ignore the questions asked

to be reviewed by the Defendant - Appellant in his opening and reply briefs. (see Appendix G, pages 2&8) This being, not to answer the errors committed by the trial court, gave them a way out of a very sticky situation. In so doing they have compounded the errors by not addressing the issues brought before the Ninth Circuit Court. They have now been condensed into two (2) questions before this Court for a ruling.

The Defendant - Appellant in his opening brief (see Appendix G&K, pages 6-8) did inform the circuit Court that their plum of the tax cases (United States v. Studley) did not apply in this instant case for Studley was in fact and law a corporate entity operating in a legislative venue and dealing in commercial credit loans, the use of bank checking and depositing thereby agreeing, thru signing the bank signature card, that

she would obey all treasury laws. This would include Title 26 USC. The circuit Court states, the Defendant - Appellant said the fourteenth Amendment is unconstitutional, but that this was ludicrous on its face. (see Appendix B, page 2) Now this is, to put it mildly, a blatant and ludicrous untruth for such learned so called men to say without proof. The Defendant - Appellant did say that the Fourteenth Amendment was waived by him and that this did remove him from the status of a subject to citizen. (see Appendex G, page 2) Also, that said amendment was never ratified honestly with the proper authority. (see Appendix G, page 3)

Now let us look at the breaches to the U.S. Constitution that the circuit Judges feel do not exsist. The first twelve amendments are within the guide lines of the Constitution so therefore do not

breach it. But starting with the Thirteenth Amendment, the Fourteenth Amendment, the Fifteenth Amendment, the Eighteenth Amendment, the Nineteenth Amendment, the Twenty Third Amendment, the Twenty Fourth Amendment and the Twenty Sixth Amendment all have one thing in common. This one thing in common is the section which says "The Congress shall have power to enforce this article by appropriate legislation". Let's not laugh at this, just look at the Twenty First Amendment. When it repealed the Eighteenth Amendment there was no need for a section giving the Congress the POWER TO ENFORCE IT. This being that the breech was removed from the Constitution in whole, thereby returning it to the original document and enforceable thru the judical process. This takes the HEART out of that theory. They make false statements and cover themselves with so

called authority by using the word frivolous and not addressing the issues. Then making the case not for publication so it will not upset their balance of power.

I, the Defendant - Appellant, cannot believe the circuit Court Judges could have reviewed this instant case de novo nor did they want to for the subject matter was such that they would be bound to rule in favor of the Defendant - Appellant making former court rulings in the past a nullity just as the great Judge Bork implyed, on the Fourteenth Amendment, in his senate hearings.

wherefore, the Defendant - Appellant has proven beyond a shadow of doubt that the U.S. District Court and the Ninth Circuit Court have errored in the hearing of said case. I now commit Point #1 to this Supreme Court of the United States for review and relief. In keeping

therewith Appellant move this Court to issue an Order prohibiting the execution of the Trial Court's Minute Entry and Final Order. Appellant further request this Court to vacate the said Minute Entry and Final Order of the Trial Court and annul, with prejudice, the IRS liens against the Appellant now and forever.

POINT NO. 2...

The circuit Court Judges have stated that the Defendant - Appellant appeals pro se. (see Appendix B, page 1) Nothing is futher from the truth, just look at (See Appendix A, page 1 and Appendix G, page 1) where the heading strictly reads "EUGENE H. DAVIS, In Propria Persona".

If you are known as a pro per litigant (In propria persona, i.e. your own proper person) you are in a judicial court. If you are referred to as a pro se litigant (i.e. one representing himself) you are in

a legislative court.

To show the importance of this issue look at the meaning of the words "United States courts": "The words 'United States courts' as used in St. Okl. 1800, p. 930 section 2, are used in the Constitution of the United States, and therefore merely refer to such courts as are a part of the federal judiciary of the United States, under article 3 of the federal Constitution, and do not include the United States courts of a terrritory." Fuller & Fuller Co. v. Johnson, 58 P. 745, 746, 8 Okl. 601.

For example in U.S. v. Lapping, (District Court case #CR87-65 BU, Portland, Oregon), on June 29, 1987, hearing the court stated its jurisdictional authority as follows:

"Under Title 26, section 7201 through 7210 were enacted pursuant to the power granted Congress by Article I, Section 8

and thereafter by the 16th Amendment to the Constitution, Title 26, thus defining laws of the United States suits for violation, which fall clearly (sic) within the Federal District Court jurisdiction under section 3231. U.S. v. Elertson, 707 F.2d 108 (4th Cir. 1983)." EXCERPT FROM PROCEEDINGS, U.S. District Court (District of Oregon), June 29, 1987, @ p. 3.

Based on the above, it is obvious the circuit Judges were using forgery by REMOVING the title form of PROPRIA PERSONA and replacing it with PRO SE this would remove the Defendant - Appellant from a judicial venue into their legislative venue. Which would be a territorial jurisdiction for both the U.S. District Court and Circuit Court to proceed under.

We must look at this word VENUE. "Venue' refers to the place where the cause may properly be tried. In re Robertson, D.C. Mo., 127 F. Supp. 39, 40."

(Words & Phrases, Vol. 44 @ p. 190 (Title "Venue")].

"'Venue' relates to geographical or territorial consideration, whereas "jurisdiction" relates to inherent judicial power of a court to adjudicate the subject matter in given case. Atchison, T. & S. F. Ry. Co. v. Superior Court of Creek County, Drumright Division, Okl., 368 P. 2d 475, 479." (Words & Phrases, Vol. 44 @ p. 194 (Title "Venue")].

Also "'Venue' is simply the geographic division where a cause shall be tried, the forum of trial. Rice v. OK Trucking Co., Ohio Com. Pl., 147 N.E.2d 526, 528." (Words & Phrases, Vol. 44 @ p. 190 (Title "Venue")].

Obviously, if the 13th and 14th Amendments do not apply outside the District of Columbia and its territories, then it is venue that determines whether

you are one properly subject to the jurisdiction and the forum enforced in.

Clearly, an understanding of venue is of the utmost importance since jurisdiction (power of the court) cannot be applied until venue is established. Undestandably, there are two distinct kinds of venue, legislative and judicial: (1) Legislative venue: (a) territorial district, (b) State or National, (c) international law jurisdiction. (2) Judicial venue: (a) judicial district, (b) county or city, (c) common law jurisdiction.

The venue of 26 USC (United States Code) is purely legislative in its subject - matter. So any violation of said code by one, subject to it's jurisdiction, must be tried in a legislative (territorial) venue, and it would be up to the government to prove to the trial court that the accused WAS ABSOLUTELY A BONDED

SERVANT of title 26 USC.

"Federal District Courts, although created by and given jurisdiction by acts of Congress, as distinguished from 'Legislative courts', are 'constitutional courts' established under a specific power given by the Constitution and cannot be given jurisdiction beyond constitutional boundaries created by the Constitution. Behlert v. James Foundation of N. Y., D.C.N.Y., 60 F. Supp. 706, 708." (Words & Phrases, Vol. 24A © p. 527 (Title "Legislative Courts")].

"Federal courts, in addition to being classified as district courts, Courts of Appeals and United States Supreme Court are also 'constitutional' and 'legislative courts', the former being subject to the jurisdictional restrictions of article III, section 2, and the judges thereof, hold office during good behavior and cannot have their compensation diminished

during their continuance in office while 'legislative' or 'Article I courts' do not have such jurisdictional limitations nor do judges have the protection afforded to judges of 'Article III courts' and they are created by the Congress as a necessary and proper act unto its enumerated powers under Article I, section 8, and they perform legislative and administrative as well as judicial functions. U. S. v. United Steelworkers of America, C.A. Pa., 271 F.2d 676, 679." (Words & Phrases, Vol. 24A @ p. 527, 528 (Title "Legislative Courts")].

"Territorial courts are 'legislative courts' and were created for presumably ephemeral purposes in virtue of power of Congress to make rules respecting 'the territory or other property belonging to the United States' U.S.C.A. Const. art. 4 section 3, cls. 1, 2. Literally, the word 'territory' as used in U.S.C.A. Const.

art. 4, section 3, cl. 2, signifies property, since the language is not 'territory or property.' And thus arises an evident difference between the words 'the territory,' and 'a territory' of the United States. The former merely designates a particular part or parts of the earths surface - the imperially extensive real estate holdings of the nation; the latter is a governmental subdivision which happened to be called a 'territory', but which quite as well could have been called a 'colony' or a 'province.' 'The Territories' are but political subdivisions of the outlying dominion of the Untied States. O'Donoghue v. U. S., Ct. Cl., 53 S. Ct. 740, 280 U.S. 516, 77 L.Ed. 1356." (Words & Phrases, Vol. 24A @ p. 528 (Title "Legislative Courts")].

A violation by an artificial person would be within the provisions of 26 USC

section 7201 therefore, within the legislative jurisdiction of a Federal territorial district court.

Let us look at another case, Balzac v. Porto Rico, 258 US 298 (1922), and I quote "(7,8) The United States District Court is not a true court established under article 3 of the Constitution to administer the judicial power of the United States there in conveyed. It is created by virtue of the sovereign congressional faculty, granted under article 4, & 3, of that instrument, of making all needful rules and regulations respecting the territory belonging to the United States. The resemblance of its jurisdiction to that of true United States courts, in offering an opportunity to nonresidents of resorting to a tribunal not subject to local influence, does not change its character as a mere territorial court".

Therefore, in keeping with the words

uttered in the Balzac v. Porto Rico, being a natural individual citizen of a State would not be considered to be residing or acting within the venue of a Federal territorial district court. He would be within the venue of a judicial district, subject only to process properly within the judicial power in contradistinction to process issued within the legislative power through a territorial Federal court or the States courts of like jurisdiction. The Defendant - Appellant could not be held and tried in Judge Alfredo C, Marquis's legislative venue court, for it is in want of subject matter jurisdiction.

For any court to take jurisdiction the facts must show on the face of the record four things: (1) in persona jurisdiction; (2) Proper venue (territorial jurisdiction); (3) jurisdiction (power of court); (4) subject matter jurisdiction.

Should the record fail to show facts proving any of the four (4) the court is in want of jurisdiction: (1) The U.S. attorney must establish persona jurisdiction by evidencing your Social Security number and that process was served according to statute; (2) The U.S. attorney establishes venue by evidencing you address containing a zip code which identifies the venue and places you within the territorial jurisdiction of the court; (3) By establishing (1) & (2) above the court establishes jurisdiction (power of court); (4) By establishing (3) above the U.S. attorney establishes that the subject matter is applicable to the court. (in this case USC 26)

It is obvious that the U.S. attorney did not establish any jurisdiction by any of the four (4) facts in the preceeding paragraph. Regardless of NO JURISDICTION the trial court did proceed foreward. (see

Appendix I, pages 1-3) and (see Appendix G, pages 5&6). This is a blatant disregard of the Defendant - Appellant's DUE PROCESS.

If this Honorable Court is not yet satisfied that the Defendant - Appellant was, by error, wrongly held and convicted by said court and that the trial court DID have jurisdiction. I shall present the following in support of the jurisdictional challenge which was before the trial Court since the beginning of said case.

In the Defendant - Appellant's initial brief to the Ninth circuit Court panel the matter of jurisdiction (NEXUS or obligation) was challenged in the trial Court's hearings twenty two (22) times at six (6) hearings (See Appendix G, pages 3 thru 5) and the government has yet to come forward with any facts and or statutes to justify their aussuming that they or the trial Court is NOT in WANT of subject

matter jurisdiction.

The Internal Revenue Service has never completed their administrative procedure. As of this date they have never sent or hand carried to the Defendant - Appellant a "Notice of Assessment" a US government form or a "Notice and Demand" a US Government form. (See Appendix K, page 4&5)

In United States of America v. Robert Leo Minarik and Aline Merkel, Case No. 3:86-00064 U.S. D. Ct., Middle District of Tennessee, Nashville Division, heard by Judge Thomas A. Higgins, the Court concluded that a "Statement of Tax Due" a US Government form was not a "Notice and Demand" a US Government form, therefore no tax obligation existed. Also that a "Statement of Tax Due" a US Government form is not a "Notice of Assessment" a US Government form.

I shall quote from the above trial

transcript Volume 5 of 5 volumes, dated November 5, 1986 and January 7, 1987, Page V103 Line 25 thru page V104 line 22:

"Mr. MINARIK: You Honor, based on the court's first observation, also there appears to be another area of question number one, points out that there was some obligation, as far as tax obligation. That hasn't been shown in evidence, either. It was only that there was -- as pointed but I think even by counsel for the Government --

THE COURT: A notice of assessment.

MR. MINARIK: That's correct.

THE COURT: You agree with that, Mr. Warren? To the extent -- this question is phrased, to the extent that its phrasing would indicate that the jury is under some impression of tax, quote, tax obligation of Mrs. Campbell, close quote, notice of tax assessment, end quote.

MR. WARREN: I agree with the Court to the extent that I find the question was totally beside the point.

THE COURT: Well, I'm just trying to take the questions piece by piece, not in their entirety, attribute any meaning to them in their entirety.

MR. WARREN: I'll agree there's been no mention of tax obligation in the course of the trial. No argument based on the idea of tax obligation."

Now I will quote from same transcript,

volume, dates but page V108 starting with line 23 and ending on page V109 line 3.

> "THE COURT: Secondly, to the extent that your message conveys the impression that there is a, quote, tax obligation on Mrs. Campbell, close quote, the Court would instruct you that the evidence in this record -- that there is evidence in this record of a notice of a tax assessment, but no evidence of a, quote, tax obligation, close quote."

In United States v. Coson, 286 F.2d 453 (9 Cir. 1961) the Ninth Circuit Court did mandate and I quote "The court of Appeals, Pope, Circuit Judge, "held --- that lack of proper notice or demand was fatal to acquisition of lien against plaintiff". Again I must emphasize that the I.R.S. has never sent me a NOTICE or DEMAND a government form for the years in question. Nor have they every sent me any form which should and must quote me what sections of IRS code are applicable in each application according to the Privacy

Act. Nor, has said agency every taken me to a Arizona State Court and been awarded a decision for the government to use said sections against a Judicial venue Arizona State Citizen.

Wherefore, the Defendant - Appellant has proven beyoud a shadow of doubt that the U.S. District Court and the Ninth Circuit Court have errored in the hearing of said case. I now commit Point #2 to this Supreme Court of the United States for review and relief. In keeping therewith, issuing an Order prohibiting the execution of the Trial Court's Minute Entry an Final Order. Appellant further request this Court to vacate the said Minute entry and final Order of the Trial Court and dissolve and annul, with prejudice, all IRS liens against Appellant now and forever.

CONCLUSION

The Defendant - Appellant has been systematically denied the due process mandated to him by the 5th Amendment. This has been accomplished by both Congress and the several State legislatures acting in concert to not only deprive him of his rights, his property, his liberty and even his natural citizenship (which bestows all the foregoing) but also to deprive him of all redress by preventing the questions from becoming the subject of a judicial cognizance.

The action in the District Court was without judicial power. However, the stated and averred status of the Defendant - Appellant demanded a proceeding replete therewith. The District Court could not lawfully subject the Defendant - Appellant

to the procedures and mode of trial appropriate to the 14th Amendment WHEN HE IS NOT, of that ilk or subject thereto.

The constitutional questions raised in both the District Court and the Ninth circuit Court of Appeals as to the validity of the 14th Amendment under Article V also demanded judical cognizance which neither court could provide.

RELIEF REQUESTED

Therefore, The Defendant - Appellant assert that the only remedy available to him is the instant Petition to this Court for review and relief. In keeping therewith the Defendant - Appellant move this Court to issue an Order prohibiting the execution of the District Court's Minute Entry and Final Order and subsequent Sentence of incarceration. Defendant - Appellant further request this

Court to vacate the said Minute Entry and Final Order of the District Court and dissolve and annnul, with prejudice, all IRS liens on the property of Eugene H. Davis now and forever.

VERIFICATION

I, Eugene H. Davis, speaking as myself, hereby affirm that all the foregoing facts are true to the best of my knowledge and ascertainment and that the asserted relationship said facts bear to the law is submitted in good faith.

Respectfully submitted and affirmed this 9th day of August, 1988.

Eugene H. Davis

Eugene H. Davis
7447 N. Camino De Oeste
Tucson, County of Pima
1st Judicial District (1909)
Republic of Arizona

AFFIRMATION OF SERVICE

STATE OF ARIZONA)
Affirmed:
County of Pima)

I Eugnen H. Davis, being of lawful age and competent to testify, do hereby declare and affirm upon my own personal knowledge that I did this same day serve true and correct copies of the foregoing PETITION FOR A WRIT OF PROHIBITION AND WRIT OF ERROR with APPENDIX by placing same in the U.S. mail, certified, post paid, and addressed to each of the following:

1. Solicitor General of the United States of America
   (Certified No. P208060368)
   Department of Justice
   Washington, D.C. 20530
2. The U.S. Attorney General
   (Certified No. P208060369)
   Constitution Ave and 10th St. NW
   Washington D.C. 20530
3. Assistant U.S. Attorney
   Janet K. Johnson
   (Certified No. P208 060370
   United Bank Plaza Box 73
   120 West Broadway
   Tucson, Arizona 85701
4. Judge Alfredo C, Marquis
   (Certified No. P208060204)
   United States District Court
   for District of Arizona
   55 E. Broadway
   Tucson, Az. 85701
5. Judges Kilkenny, Sneed and

O'Scannlain
(Certified No. P208060205)
United States Court of Appeals
P.O. Box 547
San Francisco, Ca. 94101

(2)

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October Term, 1988

IN RE EUGENE H. DAVIS; PETITIONER
IN PROPRIA PERSONA

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on a Writ of Prohibition to the United States District Court of the District of Arizona, Tucson, Judge Alfredo C. Marquez presiding; Ninth Circuit Judges, Kilkenny, Sneed and O'Scannlain; Respondents

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APPENDIX TO THE PETITION FOR A WRIT OF PROHIBITION AND WRIT OF ERROR

Eugene H. Davis
7447 N. Camino De Oeste
Tucson, County of Pima
1st Judicial District (1909)
Republic of Arizona

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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

No. CR-86-207-TUC-ACM

DEFENDANT: EUGENE H. DAVIS

WITH COUNSEL: Eugene H. Davis, Pro Per

GUILTY: Counts 1-3

Defendant has been convicted as charged of the offenses of violating Title 26, United States Code, Section 7201, attempt to evade and defeat tax, as charged in Counts 1-3 of the Indictment filed herein.

SENTENCE OR PROBATION ORDER:

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The Defendant is hereby

committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of two years on Count 1.

Imposition of the sentence is hereby suspended and the defendant is placed on probation for a period of five (5) years on each of Counts 2 and 3. Probationary terms imposed to run or be served concurrently with each other and to commence immediately.

SPECIAL CONDITIONS OF PROBATION:

IT IS FURTHER ORDERED that a special assessment of $50.00 is hereby imposed on Counts 1,2 & 3. Total Assessment: $150.00.

Additional conditions of probation is that the defendant comply with all the filing requirements past and future of the Internal Revenue Service: special condition of probation is that the defendant investigate the possibility of

going back to work for the Southern Pacific Railroad or with any other employer and to complete the proper documents.

ADDITIONAL CONDITIONS OF PROBATION:

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION:

The court orders commitment to the custody of the Attorney General and recommends, that the sentence imposed is

stayed pending the outcome of any appeal in this case. Defendant is to be supervised by probation officer pending and appeal and to obey all requirements of the probation officer in this case.

SIGNED BY: A.C. Marquez

U.S. District Judge

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,	)	
Plaintiff - Apppellee,	)	C.A.No.87-1056
v.	)	
EUGENE H. DAVIS,	)	D.C. No. 86-
Defendant - Appellant.	)	207-TUC-ACM
	)	MEMORANDUM *

Appeal from the United States District Court for the District of Arizona, Honorable Alfredo C. Marquis, Presiding

Submitted November 27, 1987 **

Before: KILKENNY, SNEED and O'SCANNLAIN, Circuit Judges.

Davis appeals pro se his conviction under 26 U.S.C. Section 7201 of three counts of income tax evasion. We affirm.

Davis first contends that the district court lacked personal jurisdiction over

him because (1) he is a sovereign individual by birth; (2) the fourteenth amendment is unconstitutional; and (3) the district court failed to meet its burden of showing that it had jurisdiction over him. We review de novo. Federal Deposit Ins. Corp. v. British-American Ins. Co., 828 F.2d 1439, 1441 (CA9 1987).

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this Circuit except as provided by CA9 Rule 36-3.
** The panel unanimously agrees that this case is appropriate for submission without oral argument per FRAP 34(a) and CA9 Rule 34-4.

A "sovereign individual" is subject to the provisions of the Internal Revenue Code. See United States v. Studley, 783 F.2d 934, 937 (CA9 1986). Moreover, Davis's contention that the fourteenth amendment to the Constitution of the United States is unconstitutional is ludicrous on its face. Finally, federal district courts have original and exclusive jurisdiction

over "all offenses against the laws of the United States[,]" 18 U.S.C. Section 3231; this includes violations of the Internal Revenue Code. Studley, 783 F2d at 937.

Davis also argues that the prosecutor lied to the grand jury by falsely stating that Davis was a "taxpayer" and not a "sovereign individual by birth." We review de novo allegations of prosecutorial misconduct before a grand jury. United States v. De Rosa, 783 F.2d 1401, 1404 (CA9), cert. denied, ___ U.S. , 106 S.Ct. 3282 (1986).

Davis's argument is frivolous. Because Davis is subject to the provisions of the Internal Revenue Code, see Studley, 783 F2d at 939, the prosecutor's remarks were correct.

The appellee has asked for two things on this appeal: that part of Davis's opening brief be stricken as scurrilous; and that sanctions be imposed for filing a

frivolous appeal.

The argument beginning at the bottom of page 13 of Davis's opening brief and continuing through to the top of page 21 is not only rambling and irrelevant to the legal issues raised in the first half of his brief, but its extremely radical theories with respect to religion also are entirely inappropriate in a formal pleading.

As to the request for sanctions, we do not find this to be an appropriate case for the imposition of damages for filing a frivolous appeal.

Accordingly, appellee's motion to strike that portion of Davis's opening brief beginning at the bottom of page 13 and continuing through to the top of page 21 is GRANTED. The request for sanctions is DENIED. The judgment of conviction is AFFIRMED.

(s) NOT SIGNED .

UNITED STATES COURT OF APPEALS

For the Ninth Circuit

UNITED STATES OF AMERICA,)

Plaintiff-Appelee,) CA NO.87-1056

v.)DC NO. CR-86

EUGENE H. DAVIS,)

Defendant-Appellant.)

APPEAL fom the United States District Court for the District of Arizona (Tucson).

THIS CAUSE came on to be heard on the Transcript of the Record from the United Stses District Court for the District of Arizona, and was duly submitted.

UN CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is affirmed.

Filed and entered February 10, 1988

UNITED STATES OF AMERICA

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,	)	
Apppellee,	)	C.A.No.87-1056
v.	)	
EUGENE H. DAVIS,	)	D.C. No. 86-
Appellant.	)	207-TUC-ACM
	)	ORDER

Before: KILKENNY, SNEED and O'SCANNLAIN, Circuit Judges.

The panel as constituted in the above case has voted to deny the petition for rehearing. Judge O'Scannlain has voted to reject the suggestion for rehearing in banc, and Judges Kilkenny and Sneed have recommended rejection of the suggestion for rehearing in banc.

The full court has been advised of the suggestion for in banc rehearing, and no judge of the court has requested a vote on the suggestion for rehearing in banc.

The petition for rehearing is denied and the suggestion for rehearing in banc is rejected.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,	)	
Apppellee,	)	C.A.No.87-1056
v.	)	
EUGENE H. DAVIS,	)	D.C. No. 86-
Appellant.	)	207-TUC-ACM
	)	ORDER

Before: KILKENNY, SNEED and O'SCANNLAIN, Circuit Judges.

This matter is now before the Court on the appellant's petition for rehearing "to be reopened" with suggestion for rehearing in banc, as well as a motion to recall and/or stay the mandate.

The petition for rehearing and suggestion for rehearing in banc have already been denied and rejected by previous Order of this Court filed April 18, 1988. The motion to recall and/or stay the mandate is DENIED.

U.S. CONSTITUTION

ARTICLE III

Section 1.

The Judicial Power of the Ubited States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Section 2.

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;--to all Cases affecting Ambassadors, other public Ministers and Consuls;--to all Cases of admiralty and maritime Jurisdiction;--to Controversies to which the United States shall be a Party;--to Controversies between two or more States;--between a State and Citizens of another State;--between Citizens of different States;--between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens or Subjects.

THE DECLARATION OF INDEPENDENCE

SECOND PARAGRAPH

Sentences 1 and 2

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed.

United States Court of Appeals

For the Ninth Circuit

EUGENE H. DAVIS,)

In Propria Persona,)

Accused/Appellant,)

v.) No.87-1056

United States of America,)

By the American Bar Assoc.,)

Accuser/Appellee.)

APPEAL OF GUVERNMENT'S ASSUMED NEXUS

IN THE UNITED STATES DISTRIC COURT

FOR THE DISTRICT OF ARIZONA TUCSON

ACCUSED/APPELLANT'S BRIEF

EUGENE H. DAVIS
IN PROPRIA PERSONA
7447 No. Camino de Oeste
Tucson, Arizona 85741

1. The United States Government and the lower Court failed to prove that a NEXUS (jurisdiction) did exist between its self and Eugene H. Davis, a Sovereign Inhabitant by Birth of this great nation.

2. The IRS and the U. S. Attorney did illegally lie and entrap the Accused before the Grand Jury.

On or about 11/24/86 the United States court for the district of Arizona at Tucson did illegally assume jurisdiction by arraignment of the Accused.

On or about 1/6/87 the United States court for the district of Arizona at Tucson did assume jurisdiction and the court did proceed with a trial.

1. The Accused did present to the United States both the Justice and the IRS a statutory waiver pursuant to the United States Uniform Commercial code at Section 1-107 delivered according to Section 1-201(14). pursuant to 28 Am Jur 2d.

Section 169. (See Attachment (1)) An Inhabitant by birth Elector/Legislator, not subject to government's NEXUS.

No one is bound to obey an unconstitutional law, and no Courts are bound to enforce it. The 14th Amendment breached the Sovereign Rights of the People of the United States of America, a Republic, and by its very existance, voided the Constitution in part or in whole removing the People from their Original and Superior Jurisdiction of the Real Property Law of Nature to citizens subject to the jurisdiction thereof. (the 14th Amendment)

The Accused did Challenge the government (IRS) and the lower Court twenty two (22) times at six (6) hearings (see the following transcripts):

Nov. 13, 1986, before Magistrate Raymond T. Terlizzi:

Page 1 line 11 thru 13 and line 16

thru 19

Page 2 Line 11 thru 14 and line 22 thru 24

Page 3 Line 7 thru 10

Nov. 13, 1986, before Judge Alfredo C. Marquez:

Page 3 Line 8 thru 12

Nov. 24, 1986, before Judge Alfredo C. Marquez:

Page 2 Line 18 thru 25

Page 3 Line 1

Page 4 Line 2 thru 25

Page 5 Line 1 thru 18

Page 6 Line 12 thru 24

Page 7 Line 23 thru 25

Page 8 Line 1 thru 4

Dec. 22, 1986, before Judge Alfredo C. Marquez:

Page 3 Line 15 thru 20

Page 5 Line 1 thru 15

Page 7 Line 24 thru 25

Page 8 Line 1 thru 9

Page 10 Line 4 thru 8

Jan. 6, 1987, berore Judge Alfredo C. Marquez:

Page 1 Line 6 thru 25

Page 2 Line 1 thru 25

Page 3 Line 1 thru 5

Page 5 Line 22 thru 25

Page 6 Line 1 thru 25

Page 7 Line 1 thru 13

Page 8 Line 7 thru 19

Feb. 23, 1987, before Judge Alfredo C. Marquez:

Page 3 Line 17 thru 25

Page 4 line 1 thru 6

Page 4 Line 15 thru 19

Page 5 Line 1 thru 6

Page 6 Line 5 thru 15

Page 10 Line 1 thru 25

Page 11 Line 1 thru 7

Page 19 Line 12 thru 19

In all of the above instant challenges the lower Court continued to assume an

illegal jurisdiction without any given authority but I got it. This Accused did inform the lower Court each time that it could not proceed without proof of a NEXUS, and that as a servants court it could never have jurisdiction over the Sovereignty of this great country.

This Court, in United States v. Studley, did not entertain the material which is being presented in this brief.

United States Court of Appeals

For the Ninth Circuit

EUGENE H. DAVIS,)

In Propria Persona,)

Accused/Appellant,)

v.) No.87-1056

United States of America,)

By the American Bar Assoc.,)

Accuser/Appellee.)

APPEAL OF GOVERNMENT'S ASSUMED NEXUS

IN THE UNITED STATES DISTRIC COURT

FOR THE DISTRICT OF ARIZONA TUCSON

ACCUSED/APPELLANT'S REPLY BRIEF

EUGENE H. DAVIS
IN PROPRIA PERSONA
7447 No. Camino de Oeste
Tucson, Arizona 85741

1. The United States Government and the lower Court failed to prove that a NEXUS (jurisdiction) did exist between its self and Eugene H. Davis, a Sovereign Inhabitant by Birth of this great nation.

2. The IRS and the U. S. Attorney did illegally lie and entrap the Accused before the Grand Jury.

On or about 11/24/86 the United States court for the district of Arizona at Tucson did illegally assume jurisdiction by arraignment of the Accused.

On or about 1/6/87 the United States court for the district of Arizona at Tucson did assume jurisdiction and the court did proceed with a trial.

1. The Accused did present to the United States both the Justice and the IRS a statutory waiver pursuant to the United States Uniform Commercial code at Section 1-107 delivered according to Section 1-201(14). pursuant to 28 Am Jur 2d.

BLACK'S LAW DICTIONARY FIFTH EDITION

HEARING DE NOVO:

Generally, a new hearing or a hearing for the second time, contemplating an entire trial in same manner in which matter was originally heard and a review of previous hearing. On hearing "de novo" court hears matter as court of original and not appellate jurisdiction. Collier & Wallis v. Astor, 9 Cal.2d 202, 70 P.2d 171, 173.

TRIAL TRANSCRIPT

February 10, 1987

Before Judge Alfredo

C. Marquez

No. CR-86-207-TUC-ACM

P R O C E E D I N G S

THE COURT: This is the time set for the trial in United States versus Eugene H. Davis.

Mr. Davis would you come forward and take a seat at the defense counsel's table.

MR. DAVIS: Your Honor, I am present in the courtroom today because as a condition to remaining free instead of being caged the Court compelled me to sign a promise to appear at each scheduled appearance. I have kept that promise faithfully for the sole purpose of challenging the in persona

jurisdiction of the Court because I am convinced that my status as a preamble citizen rather that a 14th Amendment citizen prevents my person from being subjected to the laws and jurisdiction of the maritime, law of nations, Roman civil law court unless my accuser can provide proof that a required relationship nexus when the allegation of itself implies a charge of failed specific performance necessitating a initial agreement to so perform in return for receipt of certain privileges or franchises.

I have asked repeately for the prosecution to provide this proof.

I have asked repeatedly for the Court to assert and prove jurisdiction on the record by showing wherein the authority lies for even Congress to create a relationship from a non-relationship through acts of legislation without my knowing and willing consent.

These requests have gone unanswered, Your Honor. Indeed the record clearly shows that the question of status, which forms the basis of the jurisdictional challenge, has been resolutely avoided in past proceedings.

Today, this court, of its own admission, intends to proceed to trial. This act will completely negate my jurisdictional challenge for the remainder of the proceedings before this court and compel me to endure the rigors of a trial and possible incarceration, and to be branded as a criminal pending a lengthy appeal process to resolve the very question which should have been answered in this court.

TRIAL TRANSCRIPT

February 23, 1987

Before Judge Alfredo

C. Marquez

P R O C E E D I N G S

THE DEFENDANT: I have written up some of my objections here. Can you hear me all right?

THE COURT: Sure.

THE DEFENDANT: On page 1, under citizenship, the defendant was born a citizen of Arizona and therefore is a preamble citizen of the United States by virtue of inheritance of his birthright as a member of posterity, and not one whose rights emanate from or through the Fourteenth Amendment.

I believe, you know, just putting down U.S. citizen, is not quite clarifying enough.

And on the matter of the social security number, Your Honor, the defendant has revoked and resicinded his social

security number contract and number because of constructive fraud used against him. This is based upon but not limited to violation of my rights as shown in the case Tyler v. Stcretary of State and the El Paso Natural Gas Company v. Kaiser Insurance Company.

On the matter of plea, Your honor, the defendant did not refuse to plead, but told the Court it did not have personam (ph) jurisdiction to ask for a plea. The Court then entered a plea of not guilty over the defendant's objection.

Now, if you will turn to page 3, Your Honor, on paragraph 1, the defendant does deny his role in the instant offense as enumerated by the I.R.S. report as shown in the letter to Judge Marquez and the evidence at trial.

Page 5, Your Honor, on paragraph 1, the same applies here as applies to the first paragraph of page 3.

Paragraph 2, I object to the term "financial obligation to the Internal Revenue Service". The defendant maintains thatt he has no obligations, as evidenced by this 24-page affidavit, which I hereby make a part of these proceedings, that the U.S. Attorney has had since January of 1986, proof of which is attached here for the Court.

AMENDMENT ARTICLE V

No person shall be held to answer for a capitol, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; no shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private porperty be taken for public use without just compensation.

DOCKET NO 87-1056
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

EUGENE H. DAVIS,	)	
Defendant - Appellant,	)	C.A. No.87-1056
v.	)	
United States of America,	)	D.C. No.86-
Plaintiff - Appellees.	)	207-TUC-ACM

PETITION OF EUGENE H. DAVIS FOR REHEARING TO BE REOPENED WITH SUGGESTION FOR REHEARING EN BANC

-- oOo --

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

-- oOo --

Honorable ALFREDO C. MARQUEZ, District Judge

-- oOo --

APPEARANCE:

For Plaintiff/Appellant: EUGENE H. DAVIS
7447 N. Camino de Oeste
Tucson, Az. 85741

Appellant contends that after a reasonable and studied judgment, a rehearing *en banc* is warranted in order to secure and maintain uniformity of decision in this Court.

The Decision rendered by the panel on 10th February, 1988 in the instant case, was contrary to existing law within this Circuit and contrary to decisions of the United States Supreme Court. Additionally, the panel overlooked the meritorious issues presented involving questions of exceptional importance which would affect future cases within this Circuit.

Specifically, Appellant contends on appeal that he was denied Due process of law and that was held over in this Court by the decisions of the panel.

The grounds on which this petition are brought are as follows:

FIRST: This Court's statement and

analysis of the questions presented on appeal as reflected in the MEMORANDUM of 10th February, 1988, overlooked the questions presented for review which were raised by Appellant's BRIEF and SUPPLEMENTAL REPLY BRIEF;

SECOND: This Court's failure to rule on the question of whether or not Appellant had a constitutional right to waive the 14th amendment and the government's right to enforce the same against the Appellant has deprived Appellant of appellate due process;

THIRD: The panel' decision is in conflict with other decisions of this Court;

FOURTH: The panel's decision is in conflict with decisions of the United States Supreme Court;

FIFTH: The panel did not fulfill its obligation to examine the entire record of the trial court to determine whether

Appellant was unconstitutionally harmed by the denial of all jurisdictional challenges and the dismissal of all paper placed before the trial court.

SIXTH: The Internal Revenue Service, the United States Attorney, the Grand Jury and this Court have one and all ignored and violated Title 26 USC, sections 6303, 6155, 6156, 6203, 6213, 6215, and 6331. (See Exhibit "A"). These sections of Title 26 USC all have one thing in common, that a NOTICE AND DEMAND must be made before any action can be made against a person the IRS assumes a "NEXUS" over. This was not done before the Defendant-Appellant was brought to a criminal trial and has not been to this date. Therefore, you have all committed a grave error because in the reply brief page 10, third para. and page 11, first para. this Court was told of the non-compliance to the above sections of

the IRS Code. There must be a "Notice of Assessment" a US Government form and within 60 days from the date of "Notice of Assessment" a "Notice and Demand" a US Government form must be in the hands of the accused person.

The Panel did not address the contentions and issues which were presented dealing with Appellant's right to waive any part of the U.S. Constitution and its uses against him. They also did not address where they and the court below assumed they could have jurisdiction over him. He knows that the IRS assumes that he had a bank account and that the signature card he may signed is the proof of jurisdiction in the court. This is in error for the government could not produce said signature card. Such rulings by the Panel denigrates the right for any fair and just decisions.

Mr. Justice Frankfurter, in Johnson v.

United States, 318 U.S. 189, 202, 63 S.Ct. 549, 555, 87 L.Ed. 704 (1943) stated: "In reviewing criminal cases it is particularly important for appellate courts to relive the whole trial imaginatively and not to extract from epsodes in isolation abstract questions of evidence and procedure."

The "plain error" standard should have been applied by the Panel in determining the issues presented on appeal. The Panel was empowered to notice "plain errors or defects" affecting Appellant's substantial rights even if they were not brought to the attention of the Court. Federal Rules of Criminal Procedure, Rule 52(b); Braswell v. United States 200 F.2d 597 (5th Cir. 1952).

The "plain error" rule implies an exceptional situation involving serious deficiencies which affect the fairness, integrity, or public reputation of the

judicial proceedings or which constitute obvious error. This strict standard is necessary in order to promote efficient judicial administration.

The fundamental demands of due process will frequently prove to be an inconvenience to trial courts and to trial counsel. Our Founding Fathers rejected efficiency as the polestar for our nation's criminal justice system. Instead, "due process" is the hallmark we have inherited and must preserve for criminal trials. Due process demands that Appellant not be relegated to the role of an unnecessary bystander to a critical point in his criminal trial. "While a criminal trial is not a game in which the participants are expected to enter the ring with a near match in skills, neither is it a sacrifice of unarmed prisoners to gladiators." United States ex rel Williams v. Twomey, 510 F.2d 634, 640 (7th

Cir. 1975) certiorari denied sub nom Sielaff v. Williams, 423 U.S. 876, 46 L.Ed.2d 109, 96 S.Ct. 148 (1975)

4. The Panel's Statement And Analysis Of The Questions Presented On Appeal Overlooked The Questions Raised By Appellant's Supplemental Reply Brief

The panel's analysis of Appellant's waiver of the fourteenth amendment overlooked the main critical point. In determining that the case of United States v. Studley which was a corporate entity case involving a subject to citizen pursuant to the fourteenth amendment, could have any bearing on a non-corporate entity who had by statute waived the said amendment (14th) is downright treason against the Appellant.